



THE CENTRAL AMERICA FREE TRADE AGREEMENT (CAFTA) AND ENVIRONMENTAL PROTECTION

The Environmental Context

Central America is considered one of the most biodiversity rich regions on the planet. Four of the five Central American countries included in CAFTA have tropical areas identified as “critical regions” that require the protection of biodiversity.ⁱ Costa Rica alone has an estimated 4% of all living species in a country that comprises only 0.01% of global territory.ⁱⁱ Three out of four migratory bird routes in the Western Hemisphere pass through the CAFTA countries, making the forests in this tiny strip of land an essential habitat for the survival of 225 species of birds.ⁱⁱⁱ

In the midst of already fragile ecological zones, Central America is battling with a wide range of environmental problems.

- A primary issue of grave concern is the mismanagement of Central America’s once abundant forests. The depletion of forest coverage has led to increased soil erosion, the deterioration of watersheds, and decreased biodiversity. Despite the economic and biological benefits of a healthy rainforest, Central America has lost more than 70% of its forest cover due to agriculture, overgrazing, and increased logging and mining.^{iv}
- Urban pollution, including air pollution, low levels of sewage and solid waste treatment, and chemical and pesticide runoff into water supplies, are rampant, particularly as urban migration increases.^v In Guatemala, for instance, only 3% of wastewater is treated and only 53% of households have garbage collected.^{vi}
- Central America’s coastal environment is contaminated with agricultural and industrial runoff and untreated sewage. Overfishing has led to the depletion of many valuable fish-stocks.^{vii}

Limited Laws and Weak Enforcement

In some Central American countries, most notably Guatemala and Honduras, even the most basic environmental laws are still lacking in many instances.^{viii} Guatemala, for example, lacks essential laws to address water, forests, solid wastes, and biodiversity, and its disjointed policies have led to severe environmental degradation.^{ix}

Meanwhile, those Central American countries that do have a broader set of environmental laws struggle with enforcement issues. The majority of Central American environmental laws contain no implementation language, making them virtually impossible to apply. Often, the legal burden of proof for environmental violations is placed upon the federal environmental ministry itself, making it easier for companies to pollute while the agency tries to muster the resources needed to prove that a company is in the wrong.^x Most important, the

environmental ministries of Central America are chronically underfunded by governments. Budgets are decreasing and the requirements of “structural adjustment” programs mandated by international institutions such as the International Monetary Fund often divert money away from environmental ministries. Many agencies lack the necessary equipment and expenditure allowances to do a thorough job monitoring the environment.^{xi}

CAFTA would open Central America to substantial changes in industrial and agricultural development, many of which would exacerbate the existing problems in the region if left unregulated. Meanwhile, the loss of tariff revenue that the already cash-strapped Central American governments will face due to CAFTA could substantially deepen the resource gap for environmental protection in the region.

CAFTA’s Inadequate Environmental Rules

Unfortunately, CAFTA’s environmental rules are inadequate and would not ensure that environmental protection in Central America is improved in a meaningful way. The agreement does not clearly require any country to maintain and effectively enforce a set of basic environmental laws and regulations. CAFTA also does not include an enforceable set of standards for corporate responsibility on environmental issues. Further, there is not even parity between enforcement of the existing environmental provisions and CAFTA’s commercial provisions.

CAFTA does include a process that allows citizens to make submissions alleging government failures to effectively enforce environmental laws, and this may provide a helpful opportunity to highlight specific problems. However, the process does not provide for any clear outcomes or actions to ensure environmental enforcement. In particular, the lack of enforcement tools in the citizen submission process stands in stark contrast to the monetary compensation that private investors can demand of governments under CAFTA’s investor suit rules.

Finally, CAFTA also fails to include a dedicated source funding for environmental cooperation, capacity building, and objective monitoring of environmental progress, a particularly serious gap given the substantial loss of revenue the region’s governments will experience due to CAFTA tariff reductions.

ⁱ Conservation International, Mesoamerica Biodiversity Hotspot. Available at <http://www.biodiversityhotspots.org/xp/Hotspots/mesoamerica/?showpage=Biodiversity> on March 24, 2004.

ⁱⁱ Instituto Nacional de Biodiversidad, *Informe*, Available at <http://www.inbio.ac.cr/en/biod/Biod.html>

ⁱⁱⁱ Conservation International, Mesoamerica Biodiversity Hot spot.

^{iv} Mauri, Carolina. *Environmental Law Enforcement and Compliance in Central America*. Sixth International Conference on Environmental Compliance and Enforcement. ICENE, 2002.

^v World Bank. *Latin America and Caribbean Regional Environmental Strategy*. June, 2002.

^{vi} *ibid.*

^{vii} Mauri, *Environmental Law Enforcement and Compliance in Central America*.

^{viii} United States Trade Representative. Interim Environmental Review of the U.S.-Central America Free Trade Agreement (CAFTA), August 2003.

^{ix} *ibid.* Also Inter-American Development Bank, *Guatemala Country Paper*, September 2001.

^x *ibid.*

^{xi} *ibid.*